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10/618,806

07/14/2003

Mark Roby

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06/25/2008

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EXAMINER

RICCI, JOHN A

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UNITED STATES PATENT AND TRADEMARK OFFICE

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Ex parte MARK ROBY and JOHN KENNEDY

Appeal 2008-1262
Application 10/618,806
Technology Center 1600

Decided: June 25, 2008

Before, TONI R. SCHEINER, DEMETRA J. MILLS, and RICHARD M. LEBOVITZ, *Administrative Patent Judges*.

MILLS, *Administrative Patent Judge*.

DECISION ON APPEAL

This is an appeal under 35 U.S.C. § 134. The Examiner has rejected the claims as obvious. We have jurisdiction under 35 U.S.C. § 6(b).

Claim 1 is representative.

1. A package for retaining a needle-suture combination, the package comprising:
 - a molded base portion;
 - a molded cover portion, the cover portion being integrally connected to the base portion via a hinge, wherein at least one of the base portion and

the cover portion is configured and adapted to retain a suture of a needle-suture combination; and

a needle park disposed on at least one of the base portion and the cover portion, the needle park being configured and adapted to retain a needle of the needle-suture combination therein.

Cited References

Brewer	US 4,928,830	May 29, 1990
Scirica	US 5,733,293	Mar. 31, 1998

Grounds of Rejection

1. Claims 1-18 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Scirica in view of Brewer.

DISCUSSION

Background

This invention relates to packages for surgical sutures, and more particularly to packages for retaining, storing and dispensing a surgical needle-suture combination. (Spec. 1.)

The Examiner contends that

Scirica shows a package for a needle and Suture (figure 3A) , including a base portion 66, cover 68, a needle park, a rail 74 defining a suture race 70, and an aperture 72 for passage of the suture. The cover is retained by tabs 76, and is completely removable; this has the disadvantage that the cover may be lost or misplaced. One would recognize that it would be desirable to attach the cover to the base so the cover cannot be lost. For example, Brewer shows that a container for medical equipment may have a base 22, and a cover 24 attached to the base by means of a living hinge 26 (figure 2). This would be desirable in the suture package of Scirica to prevent the cover from being lost. It would have been obvious to one of ordinary skill in the

art to attach the base and cover of Scirica by a living hinge, as suggested by Brewer.

(Ans. 4.)

Appellant contends that

the Examiner has misconstrued the art it applies to suture retainer packages. One or more suture-needle combinations are sterilized and stored in a sterile suture retainer package that is suitable for use in a sterile locale (e.g. an operating room). Once the suture retainer package is opened, the package is subsequently discarded. If the cover is lost or damaged, the sterility of the package and the suture-needle combination is compromised, and the suture-needle combination should not be used. The Brewer reference discloses a suction supply kit that has a lid attached to a base using a hinge. In contrast to the claimed suture package, Brewer's kit is designed to be repeatedly opened and closed for removing or adding components to the storage container. This is contrary and counterintuitive to preparing and using suture retainer packages. As such, it would not be obvious to one skilled in the art of suture retainer packages to consider the Brewer patent.

(Br. 5.)

In making an obviousness determination over a combination of prior art references, it is important to identify a reason why persons of ordinary skill in the art would have attempted to make the claimed subject matter. *KSR Int'l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1741 (2007). When making such a determination, the scope of the prior art and level of ordinary skill must be considered. *Graham v. John Deere Co.*, 383 U.S. 1, 17 (1966). “[A] patent composed of several elements is not proved obvious merely by demonstrating that each of its elements was, independently, known in the prior art. Although common sense directs caution as to a patent application

We find no error in the Examiner's prima facie case of obviousness. Brewer describes a medical kit in which the tray may include a cover that cooperatively configures to cover the tray. (Brewer, col. 2, ll. 59-68.) "The cover is preferably hinged to the tray to provide easy opening and closing of the kit." (Brewer, col. 2, ll. 59-68.) Brewer therefore provides a reason why a person of ordinary skill in the art would provide a hinge to a cover of the suture kit of Scirica to provide for easy opening and closing of the kit. Regarding Appellants' argument with respect to lack of relevance of Brewer because it is directed to a kit for repeated use and not a single use kit, we do not find that the claims are limited to the use described by Appellants. Furthermore, we find that providing a hinged cover to a package for retaining a needle-suture combination having a cover would have been within the creative steps a person of ordinary skill in the art would employ. Therefore, we are not persuaded by Appellants' arguments and the rejection for obviousness is affirmed.

Appeal 2008-1262
Application 10/618,806

SUMMARY

The obviousness rejection is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a).

AFFIRMED

Ssc:

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